

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 22, 2005

STATE OF TENNESSEE v. DAVID WAYNE NEAL

Appeal from the Circuit Court for Montgomery County
Nos. 40200410, 40300489, 40300569 John H. Gasaway, III, Judge

No. M2005-00763-CCA-R3-CD - Filed March 3, 2006

The Appellant, David Wayne Neal, appeals the sentencing decision of the Montgomery County Circuit Court. Neal entered a “best interest” guilty plea to one count of aggravated burglary and a guilty plea to forgery. He was sentenced to an effective term of six years in the Department of Correction. The aggregate six-year sentence was then ordered to be served consecutively to an unserved two-year sentence resulting from a revocation of probation in a separate case. On appeal, Neal argues that the trial court erred by ordering that his sentences be served in confinement. The judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

Tenn. R. App. P. 3; Judgment of the Circuit Court Affirmed Pursuant to Rule 20, Rules of the Court of Criminal Appeals

DAVID G. HAYES, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Roger E. Nell, District Public Defender, Clarksville, Tennessee, for the Appellant, David Wayne Neal.

Paul G. Summers, Attorney General and Reporter; Brian Clay Johnson, Assistant Attorney General; and Art Bieber, Assistant District Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

In October 2002, the Appellant received an effective two-year suspended sentence following his guilty pleas to three counts of forgery. In August 2003, the Appellant was indicted for aggravated burglary and theft. In September 2003, the Appellant was indicted for thirty-nine counts of forgery, four counts of identify theft, attempted theft of property, and theft of property over \$10,000.

In March 2005, the Appellant was sentenced to the minimum sentence of six years, as a multiple offender, following his “best interest” guilty plea to aggravated burglary. Additionally, the Appellant received the minimum sentence of four years, as a persistent offender, following his guilty

plea to the Class E felony of forgery. The forgery and aggravated burglary sentences were ordered to be served concurrently, and the remaining charges were dismissed. At the same hearing, the Appellant's effective two-year suspended sentence was revoked based upon his plea of guilty to violation of probation, and this sentence was ordered to be served consecutively to the effective six-year sentence. *See* T.C.A. § 40-35-115(b), -310 (2003).

The proof at the sentencing hearing established that the thirty-six-year old Appellant was unemployed and has an extensive criminal history including felony convictions for forgery, attempted aggravated robbery, theft, aggravated burglary, escape, burglary, robbery, and grand larceny. Notwithstanding the Appellant's extensive history of multiple felony and misdemeanor convictions and that he committed the instant offenses while on probation, the trial court imposed the minimum sentences within the respective ranges and ordered that the sentences be served in confinement.

On appeal, the Appellant argues, without citation to any legal authority, "that he should have been sentenced to something other than incarceration." The evidence in this case does not preponderate against the trial court's finding that sentences of incarceration are warranted. No error of law with regard to the trial court's sentencing decision is apparent on the record, and an opinion in this case would have no precedential value. Accordingly, the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID G. HAYES, JUDGE